necessary elements of a valid estoppel by representation is that the representation should be of a nature to induce, *i.e.* the representation should be made with the intention of inducing the person pleading estoppel to alter his position to his detriment. The onus of proving estoppel being on the defendant in this case, no evidence had been adduced to prove such intention or from which such intention could be inferred. Thus, although learned counsel for the defendant contended that as a result of the alleged continuous representation the defendant had acted on it by giving notice of retirement on August 12, 1970, there was no evidence that the plaintiff had by the said representation intentionally induced the defendant to act in such manner. On the contrary, by communicating with the Indian High Commission on March 18, 1970, it could reasonably be inferred that the plaintiff had every intention to prevent the defendant from sending the notice of retirement. Unlike in India, a representation made innocently or mistakenly cannot operate as an estoppel unless it was made with the intention of inducing the party pleading the estoppel to alter his position to his prejudice or detriment.

For the above reasons, the defence of estoppel must fail. Accordingly, I entered judgment for the plaintiff in terms of prayers (i), (ii) and (iii)(a) and costs.

Judgment for the plaintiff.

Solicitors: *Rajendra & Teik Ee; Zain & Co.*

CHEONG BEE v. CHINA INSURANCE CO. LTD.

[O.C.J. (Hashim Yeop A. Sani J.) March 18, 1974]
[Seremban — Civil Suit No. 215 of 1970]

Motor Insurance — Policy, construction of — Whether risk intended to be covered by policy — Road Traffic Ordinance, 1958, s. 79.

The plaintiff claimed from the defendant insurance company payment towards a judgment sum entered in favour of the plaintiff against one Abdul Rani bin Sasat the insured party. It was agreed that the accident giving rise to the judgment sum occurred during the currency of the policy so the sole point at issue was whether the risk was a risk covered by the policy because at the time of the accident Abdul Rani was in possession of an expired provisional driving licence and he was driving the insured vehicle without being under the supervision of a competent driver.

At the time of the accident, section 79 of the Road Traffic Ordinance 1958 had not been amended to include sub-paragraphs (i), (j) and (k) which were inserted in the Ordinance by Act 21 of 1967.

A clause within the policy described "the Authorised Driver" (a) as being the policy holder and (b) any other person who is driving on the policy holder's order or with his permission. The proviso to this clause states that the person driving should be permitted in accordance with the licensing or other laws to drive a motor vehicle or has been so permitted and is not disqualified by order of a court of law or by reason of any enactment in that behalf from driving the motor vehicle.

Held: upon a consideration of the policy the proviso could only apply to both limbs of the clause i.e. to the policy holder as well as to any other person driving with his permission or upon his order. The risk was therefore not covered by the policy and the claim failed.

Cases referred to:-

(1) *Tan Kwang Chin* v. *Public Prosecutor* [1959] M.L.J. 253.

(2) *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199, 1203.

CIVIL SUIT.

N. Ramachandran for the plaintiff.

Khoo Eng Chin for the defendant.

Hashim Yeop A. Sani J.: This is a suit wherein the plaintiff is claiming from the defendant insurance company for the payment towards the judgment sum of $6,600 entered on 30th October, 1970 in favour of the plaintiff against one Abdul Rani bin Sasat. It is not disputed that policy of insurance No. 416974 dated 11th November, 1965 was issued by the defendant insurance company to the said Abdul Rani bin Sasat, owner of motor vehicle No. NA 4745, to cover the use of the said vehicle against third party risks for period between 1st November, 1965 to 31st October, 1966. The accident in question occurred on 11th November, 1965.

It is the contention of the plaintiff that the accident in respect of which the said judgment was obtained occurred during the currency of the policy and the risk was the risk intended to be covered by the said policy.

The defendant company agrees that the accident occurred during the currency of the policy but disputes that the risk was a risk covered by the said policy on the grounds that at the time of the accident the said Abdul Rani bin Sasat was in possession of an expired provisional driving licence and he was driving the said vehicle without being under the supervision of a competent driver. Counsel for both parties at the commencement of the hearing agreed to rest only on their submissions and the agreed facts and no witness was called.

At the outset it must be noted that at the time of the accident *i.e.* 11th November, 1965 section 79 of the Road Traffic Ordinance, 1958 was not yet amended to include the additional sub-paragraphs (i), (j) and (k) which were inserted by Act 21 of 1967. That Act came into force on 15th January, 1968. At the material time therefore section 79 of the Ordinance merely provided that where a certificate of insurance has been delivered under that Ordinance to the person by whom a policy has been effected so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to the matters specified in paragraphs (a) to (h) inclusive shall as respects such liabilities as required to be covered be of no effect and these did not include the new sub-paragraph (j) relating to the driver of the motor vehicle at the time of the accident not holding a licence to drive or not holding a licence to drive the particular motor vehicle. The sole question to be decided is whether the accident on 11th November, 1965 was a risk intended to be covered by the policy. The answer must therefore be based solely on the construction of the policy of insurance and the related document, to wit, the proposal form — (Pages 1 and 2 in Agreed Bundle of Documents.)

Counsel for both parties cited a number of judgments but the judgments cited were those of criminal proceedings relating to driving motor vehicles without being covered by third party risks insurance under the Road Traffic Ordinance, 1958.

The basic rules of construction of a motor insurance policy are generally the same as in the case of other insurance policies. One of these principles is that the intention of the parties is to be deduced from the words of the policy or of any other document, for example, the proposal form which constitutes the contract. In the proposal form ((1) in Agreed Bundle) question 3 is divided into sub-paragraphs (a), (b) and (c) and the questions and answers are as follows: —

"3. (a) Do you employ a regular driver? If so, how long has he held a licence? — Nil

(b) State class of licence — Provisional/ Competent Licence No:.....

(c) How long have you held a licence to drive cars? — ..... "

My observation here is that, to question (a) the answer is "Nil" which is clear and unequivocal. But to questions (b) and (c) the answers are in the form of dashes, which seem to be neutral, that is to say, neither in the affirmative nor in the negative.

In the policy (Page 2 in Agreed Bundle) under the heading "GENERAL EXCEPTIONS" it is stated that the company shall not be liable in respect of any accident injury loss or damage or liability caused sustained or incurred *inter alia* whilst the motor vehicle concerned is being "driven by any person other than a driver described in the Schedule" — (see paragraph 1(b)(ii) under the same heading). In the Schedule to the Policy, the driver referred to is the "Authorised Driver" who is described in the Schedule as follows: —

"Any of the following: —

(a) The Policyholder

The Policyholder may also drive a motor car not belonging to him and not hired to him under a hire purchase agreement.

(b) Any other person who is driving on the Policyholder's order or with his permission.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

It is to be observed that no amendment was made to paragraph (b)(iii) under the heading "GENERAL EXCEPTIONS" which reads "driven by the Insured ...." and the words "(a) The Policy-holder" were not deleted from the definition of "Authorised Driver" in the Schedule.

In the Proposal Form there is reference that the $200 excess should not apply whilst the car is being driven by "(a) The Proposer" and the word "Nil" is inserted in item (b) in the same column. There is thus a clear intention to allow the insured also to drive the vehicle. At the time of the accident the insured contravened the Road Traffic Ordinance, 1958, and the Motor Vehicles (Driving Licence) Rules, 1959.

It is the contention of the plaintiff that the proviso in the definition of "Authorised Driver" appearing in the Schedule to the Policy is confined only to paragraph (b) thereof, that is, the person driving on the Policyholder's order or with his permission. Therefore since in this case it is the policyholder and not any other person who was driving the vehicle at the material time, it is therefore a risk covered by the policy.

Let us look at the purpose of a proviso. A proviso is meant to be either an "exception" or a "qualification", that is, either it excepts something out or qualifies something in, the main clause or in the case of a law, the main enactment — (see *Odger's* Construction of Deeds and Statutes — Fourth Edition page 264). Regard having had to the fact that paragraphs (a) and (b) form the definition of what is "Authorised Driver" under the policy, the proviso here therefore must be read as a qualification to cover any person who drives a motor vehicle in question whether he be the policyholder himself or anybody else whom he permits or allows to drive his vehicle. I do not think it is reasonable to construe that the proviso covers only paragraph (b) for in that case it would mean that the policyholder who drives the vehicle in question may do so without regard to the law on the driving of motor vehicles. The proviso should be construed as merely repeating the provisions of section 25 of the Road Traffic Ordinance, 1958 which provides as follows: —

"25. (1) Except as otherwise provided in this Ordinance no person shall drive a motor vehicle of any class or description, on a road unless he is the holder of a driving licence authorising him to drive a motor vehicle of that class or description, and no person shall employ or permit another person to drive a motor vehicle on the road unless the person so employed or permitted to drive is the holder of such a driving licence.

(2) Any person who acts in contravention of the provisions of this section shall be guilty of an offence.

(3) For the purposes of this section the expression 'holder of a driving licence' includes a person in possession of and driving a motor vehicle in accordance with a licence duly issued by or on behalf of the proper authority authorising such person in the course of his duties as a member of the Forces to drive a motor vehicles of the class or description specified in such licence and being a vehicle which is the property of the Government or of any Government whose forces are lawfully in the Federation under the provisions of any law for the time being in force regulating visiting forces lawfully present in the Federation."

It certainly cannot be the intention of the proviso to impose discrimination and unequal treatment in respect of competency to drive as between the policyholder and any other person under his order or permission to drive the vehicle. In my view no prudent insurer would intend to cover such a risk.

I am mindful of *Tan Kwang Chin* v. *Public Prosecutor*[1] where the learned judge referred to the judgment in *Edwards* v. *Griffiths*[2] wherein it is stated that "if there is an ambiguity or a doubt as to the extent of the Policy, we should have to construe it in favour of the assured, that is to say, if the question arose as to the liability of the insurers, we should have to put on the Policy the construction most favourable to the assured and the less favourable construction to the insurers." But I see neither ambiguity nor doubt in this case.

In the circumstances therefore I dismiss the claim with costs.

Claim dismissed.

Solicitors: *N. Ramachandran & Co.; Khoo & Sidhu.*